

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Abraham Kelty, #321472,	)	
	)	C/A No. 5:15-1130-MBS
Petitioner,	)	
	)	
vs.	)	
	)	<b>ORDER</b>
Warden, Walden Correctional Institution,	)	
	)	
Respondent.	)	
_____	)	

Petitioner Abraham Kelty is an inmate in custody of the South Carolina Department of Corrections (SCDC). On March 10, 2015, Petitioner, proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, to which he filed additional attachments on July 22, 2015. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Kaymani D. West for pretrial handling.

On June 15, 2015, Respondent filed a return and motion for summary judgment. By order filed June 16, 2015, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4<sup>th</sup> Cir. 1975), Petitioner was advised of the summary judgment procedures and the possible consequences if he failed to respond adequately. Petitioner filed a response in opposition to the motion for summary judgment on July 22, 2015.

On December 18, 2015, the Magistrate Judge issued a Report and Recommendation in which she recommended that Respondent's motion for summary judgment be granted and the petition be dismissed. A copy of the Report and Recommendation was sent to Petitioner at Walden Correctional Institution, his last known address, on December 18, 2015. On January 15, 2016, upon review of the SCDC inmate locator website, a copy of the Report and Recommendation was sent to Petitioner at his current address at Trenton Correctional Institution. Petitioner filed no objections to the Report

and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record. The court concurs in the Report and Recommendation and incorporates it herein by reference. Respondent’s motion for summary judgment (ECF No. 19) is **granted**. Petitioner’s § 2254 petition (ECF No. 1) is **denied and dismissed**, with prejudice.

#### CERTIFICATE OF APPEALABILITY

A certificate of appealability will not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that Movant has not made the requisite showing. Accordingly,

the court **denies** a certificate of appealability The court concurs in the Magistrate Judge's recommendation and incorporates the Report and Recommendation herein by reference.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour

Senior United States District Judge

Columbia, South Carolina

February 19, 2016

**NOTICE OF RIGHT TO APPEAL**

**Petitioner is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**